

JESSIE L. JOHNSON §
v. § CIVIL ACTION NO. 9:11cv8
RICK THALER, ET AL. §

The Plaintiff Jessie Johnson, proceeding *pro se*, filed this civil rights lawsuit under 42 U.S.C. §1983 complaining of alleged violations of his constitutional rights. This Court ordered that the matter be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

Johnson complained of incidents which occurred after he was legally adopted by another inmate, Daniel Johnson. He said that he was assaulted by an inmate named Clarence Moore and that he was subsequently transferred to another unit, an act which he says was taken in retaliation for the adoption. Johnson also complained that supervisory TDCJ officials failed to train and supervise their subordinates, resulting in the assault by Moore.

An evidentiary hearing was conducted and the lawsuit was dismissed as frivolous and for failure to state a claim upon which relief could be granted on July 15, 2011. On August 24, 2011, Johnson filed a motion for relief from judgment under Rule 60(b), Fed. R. Civ. P. This motion largely reiterated the claims which Johnson made in his complaint and testimony. He argued that: the guard failed to walk the run because of a failure to train or supervise, and that this resulted in his injury; false information in his file was used as a pretext to transfer him off of the Eastham Unit and

away from his adoptive father; and that his transfer off of the Eastham Unit was done in retaliation for the inter-racial nature of his adoption by Daniel Johnson.

After review of the pleadings, the Magistrate Judge issued a Report on September 13, 2011, recommending that the motion for relief from judgment be denied. Johnson filed objections to the Report on October 5, 2011, arguing in effect that his pleadings are sufficient in and of themselves to show that his claims are not frivolous. However, the Fifth Circuit has held that civil rights claimants must allege specific facts and not merely conclusory allegations. Brinkmann v. Johnston, 793 F.2d 111, 113 (5th Cir. 1986). Johnson also asserts, incorrectly, that the Magistrate Judge is biased against him because he is a prisoner, and that the Magistrate Judge “misconstrued” some of his allegations. Johnson’s objections are without merit.

The Court has conducted a careful *de novo* review of the pleadings in this cause, including the Plaintiff’s motion for relief from judgment, the Report of the Magistrate Judge, and the Plaintiff’s objections thereto. Upon such *de novo* review, the Court has concluded that the Report of the Magistrate Judge is correct and that the Plaintiff’s objections are without merit. It is accordingly

ORDERED that the Plaintiff’s objections are overruled and the Report of the Magistrate Judge (docket no. 56) is ADOPTED as the opinion of the District Court. It is further

ORDERED that the Plaintiff’s motion for relief from judgment (docket no. 55) is hereby DENIED. Rule 60(b), Fed. R. Civ. P.

So **ORDERED** and **SIGNED** this **14** day of **October, 2011**.



Ron Clark, United States District Judge